IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3086 of 2007

Ashoka Land Developers .. Petitioner

versus

Nizam Daud Shaikh & Ors. .. Respondents

...

Mr.Anil C. Singh with Anil Yadav i/b Mr.D.R. Shah for the petitioner.

CORAM : D.G. KARNIK, J

DATED : 30th August 2007.

P.C.:

1. Heard learned counsel for the petitioner.

2. This Writ Petition is directed against the judgement and order dated 26th September 2006 passed by the learned Civil Judge, Sr. Division, Palghar rejecting the application for condonation of delay.

3. The petitioner which is a private limited company filed a suit bearing Special Civil Suit

no.291 of 1996 against the respondents. The suit was dismissed in default of appearance of the petitioner on 23rd February 2000. An application bearing Misc. Application no.20 of 2000 was filed under Order 9 Rule 9 of the Code of Civil Procedure for setting aside the order of dismissal but the same was filed 5 months after expiry of period of limitation. No separate application for condonation of a delay was filed. The Misc. Application no.20 of 2000 was placed for hearing on 27th November 2001. None appeared for the petitioner on that day and therefore, Miscellaneous application was also dismissed in default on that day. The petitoiner thereafter did nothing for several months but filed a civil application for restoration of M.A. No.20 of 2000 along with the application for condonation of delay which was numbered as Misc. Application no.25 of 2002. The delay was of 17 months. By the impugned order, the said application for condonation of delay has been rejected.

4. Learned counsel for the petitioner submitted that the court ought to have been liberal in the matter of condonation of the delay. He submitted that Mr.Vashdev Pamnani who was the owner of the petitioner company was suffering from a pain in the knee problem and therefore, could not attend the

court on 27th November 2001. He was not aware of the dismissal and therefore there has been a delay in making the application for restoration of the proceeding. There are several defects in the case of the petitioner which the learned counsel for the petitioner could not explain. Firstly, petitioner is a private limited company. Therefore illness of a single officer or director of the company cannot be a ground for absence of all other directors of officers. Application nowhere states that no other officer of the director company was aware of the facts and could not attend the court. The learned Judge has noted that the petitioner has filed other suits bearing Special Civil Suit no.41 of 1997 and Suit no. 292 of 1996 in the same Court which it was attending. Though it is pleaded that petitioner came to know of the dismissal of his Misc. Application no.20 of 2002 when he had gone to the court for attending Special Suit no.41 of 1997 and 292 of 1996, no date has been disclosed when he had gone to the court and why he did not go to the Court between 27th November 2001 till the date of his alleged knowledge of dismissal. The petitioner apparently was grossly negligent.

5. As regards the alleged ground of illness assuming that illness of one of the directors or

officers can be a ground for non appearance of all other officers and directors of the company, it may be noted that the alleged illness was a pain in the knee. It was not proved that the pain in the knee was such excruciating or severe that it prevented the director or the officer to move or attend the court. The doctor is not examined. In any event, the petitioner could have informed the advocate that on a day fixed for hearing that its officer/director could not attend the court. Assuming he could not inform, he ought to have atleast made enquiry about what happened in the court on that day and should have filed an application for restoration soon after the dismissal. I see no reason to take a different view than the view taken by the trial court that the petitioner has not explained the delay at all.

6. In the circumstances, Writ Petition is rejected summarily.

(D.G. KARNIK, J)